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In the Supreme Court of the United States

OCTOBER TERM, 1955

No. 661

CLAUDE MACK LIGHTFOOT, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

BRIEF FOR THE UNITED STATES

OPINION BELOW

The opinion of the Court of Appeals (Pet. App. 37) has not yet been officially reported.

JURISDICTION

The judgment of the court below was entered on January 12, 1956. The petition for a writ of certiorari was filed in February, 1956. The jurisdiction of this Court is invoked under 28 U. S. C. 1254 (1).

QUESTIONS PRESENTED

1. Whether the evidence was sufficient to support the verdict.

2. Whether the "membership" clause of the Smith Act (18 U. S. C. 2385) is unconstitutional on its face or as applied to the facts of this case.

3. Whether the trial court properly denied petitioner's motion to require the Government to produce a written report made to the Federal Bureau of Investigation by a prosecution witness concerning a matter about which the witness had testified.

4. Whether certain evidence was admissible.

5. Whether the trial court properly construed the "membership" clause of the Smith Act in instructing the jury that the teaching and advocacy alleged in the indictment refers to the teaching and advocacy of the Communist Party as an entity rather than requiring the jury to determine that a majority of the Communist Party members individually so taught and advocated.

6. Whether Section 4 (f) of the Internal Security Act of 1950 (50 U. S. C. 783 (f)), which provides in part that "[n]either the holding of office nor membership in any Communist organization by any person shall constitute *per se* a violation" of that or any other criminal statute, bars prosecution of the offense charged in the indictment.

7. Whether the Congressional legislative findings in the Communist Control Act of 1954 (50 U. S. C. 841 *et seq.*) deprived the petitioner of a fair and impartial trial.

STATUTES INVOLVED

The Smith Act (18 U. S. C. 2385), Section 4 (f) of the Internal Security Act of 1950 (50 U. S. C. 783 (f)) and Sections 2, 3, and 4 of the Communist Control Act of 1954 (50 U. S. C. 841–3) are set forth in the appendix to the petition (Pet. App. 54–57). In addition, Section 17 of the Internal Security Act of 1950 (50 U. S. C. 796), which reads as follows, is also involved.

> The foregoing provisions of this title shall be construed as being in addition to and not in modification of existing criminal statutes.

STATEMENT

This case involved the first trial under the "membership" clause of the Smith Act.[1] After a jury trial before Judge Philip L. Sullivan, petitioner was convicted on a one count indictment charging that continuously from about July 26, 1945, up to the date of its filing on May 14, 1954, the Communist Party of the United States was a society, group and assembly of persons who teach and advocate the overthrow and destruction of the Government of the United States by force and violence as speedily as circumstances would permit; that continuously during this entire period the petitioner was a member of the Communist Party of the United States with knowledge that

[1] The second trial under the "membership" clause of the Smith Act was *Scales* v. *United States*, No. 626, this Term (petition for certiorari filed January 16, 1956).

it did so teach and advocate; and that he intended to bring about such overthrow and destruction of the Government of the United States by force and violence as speedily as circumstances would permit.

At the time of trial, petitioner admitted he was a member of the Communist Party (Tr. 6),[1] and his counsel conceded that he was both a member and an officer of the Communist Party during the indictment period (Tr. 8, 9).

The Government offered evidence, both documentary and through the witness Lautner,[2] that for a number of years prior to 1944 and from after July 26, 1945, the Communist Party of the United States was an organization dedicated to the principles of Marxism-Leninism, which teach the theory and tactics of the proletarian revolution and the dictatorship of the proletariat (Tr. 432-433, 574, 1159; Gov. Exs. 44, 45). Proof of the revolutionary content of the Marxist-Leninist program readopted by the Communist Party at

[1] "Tr." refers to the typewritten trial transcript.

[2] Lautner joined the Party in 1929 and for the greater part of his Party career, until his expulsion in 1950, was a high-ranking paid functionary. He attended the Party's highest school, the National Training School, in 1930 and 1941 (Tr. 274, 295); was a District Organizer in West Virginia from 1936 to 1940 (Tr. 290-291); taught Party classes from 1946 to 1948 (Tr. 335); attended National Party Conventions in 1936, 1938, 1940, 1942, 1945 and 1948 (Tr. 313); was a member of the National Review Commission from 1948 to 1950 (Tr. 333) and from 1947 to 1950 headed the New York State Review Commission (Tr. 334).

its 1945 National Convention was presented through Lautner who testified that, given certain objective and subjective conditions, the final aim of the Communist Party is the destruction of the existing social order known as "imperialism" and its governments and institutions, including the United States of America, and instituting instead the proletarian revolution and the dictatorship of the proletariat (Tr. 444). Lautner authenticated his testimony by reference to the basic texts used by the Party in promulgating its program (Tr. 433–435, 438–439).* These texts stress that the goal of the Party can be reached only through actual class revolt attendant with violence and bloodshed (Tr. 500–510, 513–519, 524, 544–546). Lautner also testified as to what he was taught at the Party's highest National Training Schools in 1930 and 1941 (Tr. 276, 296–302); what he as a high-ranking Party official taught at supervised classes in 1946, 1947 and 1948 (Tr.

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* *Foundations of Leninism* (Gov. Ex. 19); *Problems of Leninism* (Gov. Ex. 21); *The History of the Communist Party of the Soviet Union* (Gov. Ex. 22); *State and Revolution* (Gov. Ex. 23); *The Struggle Against Revisionism* (Gov. Ex. 48).

Among the other Marxist-Leninist classics setting forth the revolutionary program of the Party are: *The Communist Manifesto* (Gov. Ex. 18); *Left Wing Communism—An Infantile Disorder* (Gov. Ex. 25); *Strategy and Tactics* (Gov. Ex. 27); *Theory of the Proletarian Revolution* (Gov. Ex. 28). All these socalled "classics" stress the importance of Marxism-Leninism as a guide to action (Tr. 563) and treat openly the subject of force and violence in the establishment of the dictatorship of the proletariat.

335–338); and what texts were used at Party schools and circulated by the Party generally (Tr. 293–294, 299–302, 337–338, 434–436).

On the issue of whether the Communist Party taught and advocated the violent overthrow of the Government throughout the period alleged in the indictment, the testimony of Lautner, coupled with that of the witnesses Meyer, Skinner, Brzek, Ondrejka, Cummings, Herron and Czarnowski and the documentary evidence, was very similar to and in some respects identical with that received in other Smith Act cases, such as *United States* v. *Dennis*, 183 F 2d 201 (C. A. 2), affirmed, 341 U. S. 494; *Frankfeld* v. *United States*, 198 F. 2d 679 (C. A. 4), certiorari denied, 344 U. S. 922; and *United States* v. *Flynn*, 216 F. 2d 354 (C. A. 2), certiorari denied, 348 U. S. 909.

The evidence disclosed that the petitioner's role in the Party was not that of a minor actor but rather that of a highly trained, well disciplined professional. He had been a member of the Communist Party since at least 1934 and was early a Section Organizer for the Young Communist League and a member of the District Bureau of that League (Tr. 115). Later, he was a Section Organizer and a member of the District Committee of the Illinois-Indiana District of the Party (Tr. 115). In 1936, he was a delegate to the Sixth Congress of the Young Communist International (Tr. 118). He was a paid employee of the Party from as early as 1937 (Tr. 41; Gov.

Ex. 9) and on business and public records which continued through the statutory period he stated himself to be the Executive Secretary of the Illinois State Committee of the Communist Party (Tr. 39–40; Gov. Exs. 2, 5). In 1938, he taught in the Chicago Workers School operated by the Communist Party (Tr. 117), and from 1938 to 1942 he taught in a number of inner Party training schools (Tr. 160). He was elected to the State Board of the Communist Party at the Illinois State Convention in 1945 (Tr. 64). At the 1948 State Convention of the Party, he was appointed as a regional director of a new Party set-up to bring about Communist infiltration in the basic or vital community industries (Tr. 777, 780). In 1950, he was elevated to the position of Member of the National Committee of the Communist Party, a position he held up to the time of the indictment (Tr. 725–726; Gov. Exs. 61, 93).

The corner-stone Party doctrine of "democratic centralism" left no room in the Party for members who might not agree with its program of forceful and violent overthrow of our Government. Party members were bound to accept without question the teachings of the Communist leadership (Tr. 338; Gov. Ex. 55). The evidence, moreover, is abundant that petitioner possessed a thorough understanding of the Party's revolutionary aims and purposes and that he personally had the specific intent to bring them about.

Petitioner's *scienter* is revealed by the testimony of the witness Meyer[5] who was closely connected with petitioner in Party activities from 1934 to 1942 (Tr. 112–113). During a good part of this period, petitioner was a member of the faculty of the Chicago Workers School, of which the witness was a director, and he taught classes on "Marxism-Leninism", "History of the Communist Party of the Soviet Union", "Political Economy and the Negro Question" (Tr. 117, 122, 128). The witness discussed the theoretical content of these courses with petitioner on many occasions (Tr. 134–135) and he checked less on his class instruction than that of other instructors because he was so good (Tr. 128). In order to teach these courses petitioner was, and had to be, recognized by the Party as politically reliable and theoretically skilled in Communist doctrine.

Petitioner used as texts the works referred to *supra*, p. 5, footnote 4. The witness often discussed the contents of these books with petitioner in order to see that the teaching of the school was uniform and correct from the Communist point

[5] Meyer joined the Communist Party of Great Britain in 1931 and later was co-opted to the Central Committee of the Party of Great Britain (Tr. 103–104). He returned to the United States in July 1934 with a transfer to the Communist Party of the United States (Tr. 106–107). In 1938, he became director of the Chicago Workers School and educational director of the Illinois-Indiana District, and in 1941 became assistant organizational secretary of that District (Tr. 116). The witness had no further connection with the Party after 1945.

of view (Tr. 194–200). Petitioner taught not only in the Chicago Workers School, but also in a considerable number of inner Party classes (Tr. 160), as well as in District Training Schools which were full-time Party schools for the purpose of hardening and training leadership in Communist activities (Tr. 160, 163). These schools were taught only by leading Party functionaries who were specializing in Marxism-Leninism (Tr. 164) and were conducted under circumstances which secluded the students and kept them entirely under continuing training pressure (Tr. 161) and in which training went beyond the theories of the classics to include matters relating to the personality of the students and their Party activities (Tr. 162). During the period that Meyer knew him, petitioner was a top leading Party functionary and one of the most theoretically capable people in the Indiana-Illinoise District of the Communist Party (Tr. 165).

The testimony of the other witnesses also showed petitioner's active and knowing membership. Lautner testified that he checked petitioner in as a delegate to the 1948 National Communist Party Convention (Tr. 355–356). Herron[6] testified that he attended a State Convention of the Illinois Communist Party in 1945 at which peti-

[6] Herron joined the Party at the request of the FBI in 1944 and reported on Communist Party activities to that agency until 1947 when he ceased all Party activity after moving away from the Chicago area (Tr. 57, 95).

tioner was elected to the State Board of the Party (Tr. 64).

Ondrejka [7] testified that in about June 1951 he attended a meeting of high Communist Party functionaries in Chicago, including Gil Green, a National Party leader who had recently been convicted in the *Dennis* case, at which petitioner was introduced as an officer of the Communist Party of Illinois (Tr. 676–677). Petitioner at this meeting stressed that the Communists must go into the working class movement and that by doing this they would be following the "Marxian line" (Tr. 676).

Cummings [8] testified that he met petitioner at the 1948 National Convention of the Communist Pary in New York City and that during each session of the Convention which lasted for three days the petitioner occupied the speaker's platform with National Party leaders Eugene Dennis, William Z. Foster and Elizabeth Gurley Flynn (Tr. 950) and chaired one session (Tr. 951).

Skinner [9] testified to attendance at the Abraham Lincoln School in Chicago in 1946 at which she

[7] Ondrejka joined the Party at the request of the FBI in 1949 and later became Educational Director of the Youth Group of the Communist Party in Milwaukee (Tr. 662, 666).

[8] Cummings was a member of the Party from 1943 to 1949 and joined at the request of the FBI. He was a prosecution witness in the *Dennis* case in 1949.

[9] Skinner was a member of the Party from 1946 to January 1948 and during part of that period worked in the District Office of the Communist Party in Chicago (Tr. 971–972).

was taught a course in "Fundamentals of Marxism" by petitioner (Tr. 975). She also testified to attendance at another Party school at Lake Ivanhoe, Wisconsin in 1947 (Tr. 975–976) where petitioner taught classes in "Strategy and Tactics" and "History and Role of the Party." (Tr. 991)

Brzek,[10] like the witness Skinner, attended the Communist Party full time school at Lake Ivanhoe, Wisconsin in July 1947 at which petitioner taught courses in "Strategy and Tactics" and "History and Role of the Party" (Tr. 991; Gov. Ex. 54). In connection with these courses, petitioner used a pamphlet entitled "Democratic Centralism" (Tr. 991; Gov. Ex. 55) and a copy of "The History of the Communist Party of the Soviet Union" (Tr. 992; Gov. Ex. 56). In these classes petitioner spoke on the Russian Revolution (Tr. 995), Communist Party discipline (Tr. 997) and in conclusion stated "If we have to spill blood we will" (Tr. 1000).

Czarnowski[11] testified that he knew petitioner as a member of the State Committee, Regional

[10] Brzek was a member of the Party in Milwaukee, Wisconsin from 1943 to 1947 and joined at the request of the FBI (Tr. 980).

[11] Czarnowski joined the Party at the request of the FBI in 1943 and reported to that agency on Communist activities in the Chicago area until he appeared in court as a Government witness against petitioner. He met petitioner in late 1945 at a closed Party meeting in Chicago (Tr. 753–754) and attended numerous other Party functions with him until June 1951 (Tr. 755, 758, 760, 761, 764, 770, 772, 783, 786, 805).

Director of Industrial Concentration and a member of the National Committee of the Communist Party (Tr. 691). At a meeting of the Southwest Section of the Communist Party in Chicago soon after the reconstitution of the Party, petitioner spoke in praise of the success of the Russian Revolution under the leadership of Lenin and Stalin (Tr. 756). Again at a Party meeting in the Ashland Auditorium in Chicago in 1947, petitioner spoke about his experiences before the Illinois Legislative Committee investigating subversive activities, and, consistent with the principles of "democratic centralism," promised protective secrecy for the Party records (Tr. 760). At this same assembly he advised the membership on the use of the underground (Tr. 761).

On November 10, 1950, petitioner delivered the principal address at a Communist meeting held to celebrate the 33rd Anniversary of the Russian Revolution (Tr. 785–791; Gov. Ex. 63). On May 26, 1951, he accepted congratulations of other Party members for his having been elevated to the National Committee (Tr. 729; Gov. Ex. 61). On June 11, 1951, in Forum Hall, Chicago, petitioner addressed a Party meeting at which he assured those present that in the end they would win against their enemies, and in which meeting he had members stand and led them in singing the "Internationale" (Tr. 807–808).

Petitioner continued his active membership and held high office in the Communist Party on

into and through the three year period prior to the indictment (Tr. 672, 729, 806; Gov. Exs. 1–5, 59, 61, 64, 66). The record contains several instances where petitioner contributed articles to Party publications, stressing the importance of the "classics." These writings emphasize that the Party's educational work is not mere study for the sake of study but is aimed at equipping the membership with knowledge and experience to adopt the most effective tactics in effecting the ultimate aims of Marxism-Leninism [12] (Gov. Exs. 57, 58, 59, 60, 63, 64, 66).

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[12] *E. g.:* (1) In the December 1951 edition of "Party Forum," petitioner stated (Tr. 815; Gov. Ex. 64):

"We cannot carry out these responsibilities unless we achieve a greater knowledge of the Marxist, Leninist and Stalinist teachings on the National Question. I refer to such classic works as 'Marxism and the National Colonial Question' by J. Stalin, the 'National Question' in 'Foundations of Leninism' and the 'History of the CPSU'. These works together with the new experiences that have been generated by the Chinese revolution and reflected in the works of Mao Tse Tung and Liu Shao-Chi, plus the Resolution of our Party on the Negro Question, must serve as guiding lights in approaching the Negro Question in the U. S."

(2) In another article in the same publication, he went on to state (Tr. 819–821):

"Perhaps one of the major reasons why we have not helped generate expanded mass activities in this period is the erroneous belief that the Party cannot make, relatively speaking, much progress until the storms surrounding us have subsided. * * *

* * * * *

"Let us remember that the Bolshevik Party (CPSU) in 1917 emerged from the underground in February and took power in the short space of eight months. Most of the preparatory work for the seizure of power was done in the

ARGUMENT

1. Petitioner first argues (Pet. 13–16) that the evidence adduced at the trial was insufficient as a matter of law to sustain the verdict. He asserts that there was produced "no evidence that petitioner had ever said or written a word in which he advocated the violent overthrow of the government" (Pet. 14), and he relies heavily on this Court's decision in *Schneiderman* v. *United States,* 320 U. S. 118.

But in the *Schneiderman* case the Court considered only the teaching and advocacy of the Communist Party up to and including 1927, and the Court expressly did not rule on the question of whether the Communist Party as of that time taught and advocated the violent overthrow.[13] Since then a great deal has transpired, as the evidence in this case clearly reflects, which renders conclusive the fact that the Communist Party teaches and advocates the overthrow of the Government of the United States by force and violence.

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conditions of the underground. Let us not forget that the Communist Parties of Europe, especially in France and Italy, won the leadership of the working class in the underground partisan movements—a task they had not been able to accomplish prior to the Nazi occupation of their countries. * * *"

[13] The Court in *Schneiderman* observed at page 153: "We do not say that a reasonable man could not possibly have found, as the district court did, that the Communist Party in 1927 actively urged the overthrow of the Government by force and violence. But that is not the issue here. * * *"

In the instant case the jury had before it numerous exhibits not considered in the *Schneiderman* case, as well as direct testimony of several witnesses as to the revolutionary aims and purposes of the Party prior to and during the statutory period. As pointed out in the Statement, *supra,* the Party openly proclaims its adherence to the basic principles of Marxism-Leninism. Lautner testified that the principles of Marxism-Leninism are applicable to the present period which is called the period of "imperialism" by the Communists. Marxism-Leninism "is the theory and tactics of the proletarian revolution in general, and the theory and tactics of the dictatorship of the proletariat in particular" (Tr. 433). Lautner explained that since the United States is considered the leading imperialist country by the Communist Party, the final aim of the Party in the United States is the destruction of the existing social order and instituting in its stead "through the proletarian revolution and the dictatorship of the proletariat, socialism" (Tr. 444). As pointed out in the Statement, *supra,* and in the words of the court below, the "Party taught that to reach the goal of the 'Proletarian Revolution and the Dictatorship of the Proletariat', actual class revolt would be necessary, and violence and bloodshed inevitably would result" (Pet. App. 40).

Contrary to petitioner's bald assertion, the evidence to demonstrate petitioner's knowledge of

the Party's revolutionary program and his intent to bring about such overthrow was also abundant. He was an active member of the Party for over nineteen years, during which time a considerable amount of his effort in behalf of the Party was spent in teaching the doctrines of Marxism-Leninism in official Communist Party schools, including courses on "Strategy and Tactics" and "History and Role of the Party". See *supra*, pp. 8–9, 10–11. At one such school at Lake Ivanhoe, Wisconsin, in 1947, petitioner lectured on the failure of the first Russian revolution, when the strikers were driven back by the soldiers; he related that later a second revolution was begun by a series of strikes which spread all over (Tr. 995); the women joined the strikers and the soldiers came over to the side "of the people" and the revolution was successful (Tr. 996). Petitioner compared the discipline in the Communist Party with the staff system employed by the Army, where the generals are the highest authority. He referred to the students as the "privates" and likened himself to a "sergeant," because of his "advanced education in the Communist Party." Petitioner admonished the students that when the time came they would have to go where they were needed, leaving their wives and children. Wherever the strikes would occur, these Communist Party members would be needed to help the movement (Tr. 997–998). He warned that the Party would have a problem with the control of the Army and Navy,

but he "brushed by" that, stating that this was a problem for the top officials of the Communist Party (Tr. 997–998). He said that they would "approach this to avoid bloodshed, but those who had the control wouldn't want to give up." In capitalistic wars "it is not the capitalists" who spill their blood. "However, in this case it would be their blood" (Tr. 999). He said that the approach would be a more quiet method than by shooting firearms, but he added that the students may be at a place where they would be killed, but that those who survived would receive the benefits of the future generations (Tr. 999–1000). He once again remarked that "we will try to avoid bloodshed," but "we will not be pushed off. If we have to spill blood we will" (Tr. 1000).

Petitioner's familiarity with and his advocacy of the Marxist-Leninist revolutionary program are demonstrated not only by his organizational leadership and his teaching in Party schools, but also by his writings in official Party publications, in which he repeatedly urged Party members of the need to acquire greater knowledge of the Marxist-Leninist teachings (Gov. Exs. 59, 64, 66). All this evidence was fully sufficient, as was held in *Dennis* v. *United States*, 341 U. S. 494, to demonstrate that members of the Party who are so engaged "certainly * * * intend to bring about [the] overthrow [of the Government]" (page 499).

2. Petitioner next contends (Pet. 17–23) that his conviction cannot stand since the "membership" provision of the Smith Act is unconstitutional on its face and as applied in this case. Like the pending petition in *Scales* v. *United States*, No. 626, this Term, petitioner attacks the statute's constitutionality on three grounds: (1) that the "membership" clause fails to include intent as an element of the offense (Pet. 17–19), (2) that, even if intent is an element of the offense, the "membership" clause imputes guilt solely by reason of association (Pet. 19–20), and (3) that the application of the "membership" clause could not possibly satisfy the clear and present danger test as formulated in *Dennis* v. *United States*, 341 U. S. 494 (Pet. 21–23).

(a). Petitioner argues (Pet. 18) that the indictment seeks to remedy a fatal defect in the "membership" clause by charging that petitioner intended to bring about the overthrow of the Government. A like argument was advanced in *Dennis* and, while that case did not involve the "membership" clause of Section 2 (a) (3) of the Smith Act, it did involve the "organizing" clause of that subsection and also Section 2 (a) (1), relating to advocacy. In reviewing the trial judge's construction of the statute as requiring a specific intent, this Court said at page 499: "The structure and purpose of the statute demand the inclusion of intent as an element of the crime."

(b). Nevertheless, petitioner contends that the "membership" clause cannot be saved, even if proof of intent be required, because the statute imputes guilt solely by reason of association (Pet. 19). Petitioner refuses to acknowledge that "those who * * * combine for the purpose of advocating overthrow intend to bring about that overthrow." *Dennis* v. *United States*, *supra*, at 499. It is the *combining* with others in *active membership* in an organization advocating the Government's forcible destruction which constitutes the external manifestation of the illegal purpose. Petitioner's active membership and leadership in the Communist Party throughout the entire period alleged in the indictment is as much an overt act as the "advocacy" which the Court in *Dennis* found sufficient to justify the imposition of the statute's criminal penalties. In the face of the requirements that an accused charged with membership in a proscribed organization must be shown to have knowledge of the organization's illicit purposes and teachings and to have the specific intent to bring about the overthrow as speedily as circumstances would permit, the argument that the accused may be convicted for innocent association is completely untenable.

(c). The factors which led to the *Dennis* holdings on constitutionality impel the same result in this case. There the crucial elements were (i) the defendants' knowledge of the unlawful objectives of the Communist Party, (ii) their

active participation in support and furtherance of those proscribed objectives and (iii) the role of the Communist Party in the World. Manifestly, each of those elements is present here. The jury has found that petitioner was well aware of the Party's aim to overthrow the Government by force and violence; he furthered and supported that end by his continued active membership and leadership; and the place of the Communist Party in American and world affairs during the statutory period (May 14, 1951–May 14, 1954) was surely no less significant and no less dangerous than in *Dennis* or in *Frankfeld* v. *United States*, 198 F. 2d 679 (C. A. 4), certiorari denied, 344 U. S. 922, or in *United States* v. *Flynn*, 216 F. 2d 354 (C. A. 2), certiorari denied, 348 U. S. 909.

At least where, as in petitioner's case, the membership is active and not merely passive or nominal, (cf. *Galvan* v. *Press*, 347 U. S. 522, 526–527), it does not seem a tenable argument that, although Congress may punish one who *advocates* the violent overthrow of the Government or who *organizes* a group which so advocates, it is without constitutional power to prohibit *membership* in such an organization with knowledge on the part of the member of this unlawful purpose, as well as the intent that it be brought about. Those who retain such active membership in an organization of this type "render [it] aid and encouragement" (*Frankfeld* v. *United States*, *supra*, at

684), contribute to its success, and thereby help it in the achievement of its evil purpose. This is certainly "a sufficient evil for Congress to prevent." *Dennis* v. *United States, supra,* at 509.

3. Petitioner complains (Pet. 24–25) that it was reversible error for the trial court to deny his motion to require the Government to produce for the court's inspection a contemporaneous report made to the Federal Bureau of Investigation by the prosecution witness Brzek concerning the subject matter of his testimony. As was pointed out by the court below (Pet. App. 46–48), not only was the denial of the motion a proper exercise of the court's discretion within the rule of law laid down by this Court in *Gordon* v. *United States,* 344 U. S. 414, 418–419, and in *Goldman* v. *United States,* 316 U. S. 129, 132, but the record also shows that the motion was untimely.[14]

Petitioner's counsel, during the course of cross-examination of Brzek, brought out only that the report in question was in existence and was in possession of the Federal Bureau of Investigation in Milwaukee, Wisconsin. The "report thus

[14] Earlier in the case, the trial court had inspected reports made to the Federal Bureau of Investigation by another prosecution witness, Czarnowski. During cross-examination of Czarnowski, petitioner moved that the trial judge inspect three written reports of the witness (Tr. 922–927), which reports were submitted to the court pursuant to its order (Tr. 989). After inspection of the reports, the court found there was no contradiction between the testimony of the witness and the reports, and the reports were excluded (Tr. 1014–1015).

made was not in the courtroom, nor did the witness use a copy thereof to refresh his memory" (Pet. App. 47). No foundation whatever was laid by petitioner tending to show that the report would in any way impeach or contradict the witness or exculpate the petitioner, or would otherwise be materially relevant. Petitioner's counsel announced he had concluded his cross-examination, the Government had no redirect examination, *and the witness was excused* (Tr. 1011). Government counsel advised the court that, except for "loose ends" resulting from miscellaneous trial motions on which the court had reserved decision, the Government rested its case (Tr. 1012). It was not until this point in the proceedings that petitioner's counsel asked leave to approach the bench and during the ensuing conference at side bar moved for production of Brzek's report (Tr. 1013). Good cause not having been shown, the motion was properly denied (Tr. 1021). *Goldman* v. *U. S., supra; Gordon* v. *United States, supra.*

4. As his fourth point, petitioner declares that the Court of Appeals' decision sustaining the evidentiary rulings of the trial court conflicts with decisions in other circuits and is a departure from accepted principles applicable to criminal trials (Pet. 26–29).

(a). Petitioner complains because Lautner was permitted to give opinion testimony as to the meaning of Marxism-Leninism and as to the aims

of the Communist Party, and he urges that such testimony should have been excluded as inadmissible hearsay (Pet. 26). The witness was a high level functionary in the Communist Party over a period of approximately twenty years ending in 1950. During his Party membership he was a teacher in official Communist Party schools and held various organizational positions in the Party. Clearly the witness' activities as a leader in the Communist Party qualified him as an expert on the subject matter of his testimony, which related to matters involving specialized knowledge "as to which the opinion of experts is unquestionably admissible." *Frankfeld* v. *United States, supra,* at 689.

Contrary to petitioner's assertion that similar testimony was admitted in Smith Act conspiracy cases on the basis of conspiracy law (Pet. 26), its admissibility in such cases was predicated (1) on the fact that the subject matter under inquiry was relevant to the charge and (2) on the ground that it was a proper subject for expert testimony. *E. g., Frankfeld* v. *United States, supra,* at 689; see also, Brief for the United States in *Scales* v. *United States,* No. 626, this Term, at pp. 22–23.

(b). Petitioner contends that the testimony of Meyer, even if relevant to petitioner's knowledge or intent, was inadmissible as being too remote. The argument is that Meyer's testimony relative to conversations had with petitioner prior to

June 28, 1940, cannot be used to show intent, since it cannot be presumed that a state of mind, innocent at the time it was shown to exist, would continue unchanged after an enactment of a law making it an element of an offense (Pet. 27). Petitioner ignores the fact that the evidence offered at the trial overcame any such presumption and established that he possessed the requisite knowledge and intent throughout the entire period alleged in the indictment. "How far back of the commission of a crime one may go is a matter of degree, and within the general control of the judge over the relevancy of evidence." *United States* v. *Dennis,* 183 F. 2d at 231 (C. A. 2).

(c). Petitioner also urges that, if the Lautner and Meyer testimony was inadmissible, it follows that the Marxist-Leninist classics which they identified likewise should have been excluded, and that such texts should have been excluded for the additional reason that there was no evidence that the petitioner understood or taught that this literature advocated the violent overthrow of the Government (Pet. 28–29).

This classical literature is identical to some of that which was received in all prior Smith Act prosecutions involving Communist Party leaders, *e. g., United States* v. *Dennis, supra; Frankfeld* v. *United States, supra; United States* v. *Flynn,* 216 F. 2d 354 (C. A. 2) certiorari denied, 348 U. S. 909. As pointed out in the Statement,

supra, the evidence demonstrated that the Communist Party bases itself on Marxism-Leninism as contained in the classical writings of Marx, Engels, Lenin and Stalin. Petitioner's familiarity with and use of the Marxist classics, in his capacity as a teacher at official Communist Party schools, was brought out through the testimony of several witnesses.

5. Petitioner's next point is that the Court of Appeals erred in affirming the trial court's instruction to the jury that the teaching and advocacy alleged in the indictment have reference to the teaching and advocacy of the Communist Party as an entity and not to that of the members individually (Pet. 29–31). The very language of the Smith Act negatives the contention that Congress intended the test of guilt to be knowledge that a majority or a substantial portion of the organization's membership advocated the proscribed doctrine. If the statute be construed so as to require proof that the individual members, as distinguished from the group, advocated the proscribed doctrine, there would be no basis for contending, as does petitioner, that the advocacy of a *majority* or a *substantial portion* of those members would be sufficient. Rather, under petitioner's theory, it should be more logically assumed that Congress intended that *all* of the members must be proved to advocate the proscribed teaching in order to bring any individual within the purview of the statute. The

absurd consequences which would flow from petitioner's theory are obvious.

6. As his sixth point, petitioner argues that Section 4 (f) of the Internal Security Act of 1950 (50 U. S. C. 783 (f)) bars prosecution of the offense charged in the indictment (Pet. 31–34). We submit, however, that the Court of Appeals was correct in holding that Section 4 (f) has no such effect.

First, the words of the pertinent provisions of the Smith Act itself show that mere membership in the Communist Party alone does not constitute the offense. As petitioner concedes in his discussion of the sufficiency of the evidence (Pet. 18–20), the statute expressly sets forth, as an additional element, knowledge on the part of the defendant of the purposes of the society, group or assembly of persons who teach and advocate the overthrow and destruction of the Government of the United States by force and violence. Furthermore, the prosecution must allege and prove that the defendant intended to bring about the Government's violent overthrow as speedily as circumstances would permit. See *Dennis* v. *United States*, *supra*, at 499. Thus, petitioner has not been convicted on mere proof of Party membership *per se*. The conviction rests on much more—knowing, active, and purposive membership.

Secondly, it is clear, as the court below pointed out that the "purpose of [Section 4 (f)] * * *

was to insure the enforceability of the registration provisions of the act [Internal Security Act of 1950] by making the privilege against self-incrimination unavailable as a defense to failure to register" (Pet. App. 52).[15] That the Congress intended to do not more than this is borne out by the legislative history[16] and by Section 17 of the Internal Security Act of 1950 (50 U. S. C. 796) which limits the application of Section 4 (f) to the provisions of that Act. It provides that—

> The foregoing provisions of this title shall be construed as being in addition to and *not in modification of existing criminal statutes.* [Emphasis added.]

Petitioner also urges that the Communist Control Act of 1954 must be construed to amend or repeal the "membership" clause of the Smith Act, thus barring his conviction. The 1954 Act contains no reference to the Smith Act, nor does its history indicate any purpose on the part of Congress that the later statute repeal, amend, or supplement the Smith Act.[17]

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[15] The court below, in reaching its conclusion on this point, adopted the language of the Court of Appeals for the Fourth Circuit in disposing of an identical argument made in *Scales* v. *United States*, 227 F. 2d 581, pending on petition for a writ of certiorari, No. 626, this Term.

[16] See 96 Cong. Rec. 14175, 15198.

[17] The legislative history reflects the opposite. See 100 Cong. Rec. 15102–15110, and particularly the remarks of Senators Humphrey and Kefauver at pages 15105 and 15106, respectively. It is significant in this regard, also, that the

7. As his seventh and final point, petitioner argues that he was deprived of his right to a fair and impartial trial by virtue of the legislative findings in Sections 2, 3, and 4 of the Communist Control Act of 1954, in which Congress declared that the Communist Party advocates the overthrow of the United States Government by force and violence. Petitioner contends that in the face of this legislation it would be naive to suppose that a jury would even consider the question *de novo,* much less render a contrary verdict. (Pet. 34–35.)

Petitioner does not argue that prejudice on the part of any juror appears from the record, but he urges that prejudice on the part of every prospective juror must be implied. As the court below held (Pet. App. 52), the effect of petitioner's argument would be to immunize from prosecution all Communists charged with violating the Smith Act. Also, as the court stated (Pet. App. 52):

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petition (p. 33) distorts the meaning of the Humphrey Amendment by urging that it provided that membership in the Communist Party would be illegal only when accompanied by "knowledge of its purpose." The plain meaning of the Amendment was, however, that membership *per se* in the Communist Party would be outlawed, that knowledge of alleged illicit purposes was only required in connection with membership in "any other organization having for one of its purposes or objectives * * * overthrow of the Government of the United States * * * by the use of force or violence."

If any jury had any such prejudgment, the instructions of the Court cured their error.[18] Furthermore, whether any such belief existed in the mind of any juror, might have been discovered on the *voir dire* examination.

CONCLUSION

For the reasons set forth herein, we submit that the decision below, like that in *Scales* v. *United States*, No. 626, is correct and need not be reviewed. We recognize, however, that, should the Court grant the writ in *Scales* it may desire to review this case as well, or to hold the petition in abeyance pending the disposition of that case. If certiorari is granted here, we urge that review be limited to the issues embraced in the First,

[18] For example, the trial judge instructed the jury that before the defendant could be found guilty of the charge in the indictment the jury "must believe *from all the evidence* and beyond a reasonable doubt that the Communist Party of the United States * * * was a society, group and assembly of persons who taught and advocated the overthrow and destruction of the Government of the United States by force and violence as speedily as circumstances would permit" (Tr. 1504, emphasis added).

Second, and Sixth questions which petitioner seeks to bring to this Court.

Respectfully submitted.

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